

San Francisco Bay Conservation and Development Commission

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January 4, 2019

TO: Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
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SUBJECT: Listing of Pending Administrative Matters
(For Commission consideration on January 17, 2019)

This report lists the administrative permit applications, federal consistency actions, marsh development permits in the Secondary Management Area of the Suisun Marsh, regionwide permit actions, minor amendments to the Suisun Marsh Local Protection Program, and emergency permits that are pending with the Commission. The staff members to whom the matters have been assigned are indicated at the end of the projects' description. Inquiries should be directed to the assigned staff member prior to the Commission meeting.

Administrative Permits and Federal Consistency Actions

The following administrative permit application has been filed and is presently pending with the Commission. The Executive Director will take the action indicated on the matter unless the Commission determines that it is necessary to hold a public hearing.

Applicant: Oakland Global Rail Enterprise, LLC
300 Frank H. Ogawa Plaza, Suite 340
Oakland, California 94612

BCDC Permit Application No. M2018.023.00

Filed: 10/24/18

90th Day: 01/22/19

Location: Within the Commission's 100-foot shoreline band jurisdiction, along the southern edge of Burma Road, at the former Oakland Army Base, in the City of Oakland, Alameda County (Exhibits A and B).

Description: Install, use, and maintain in-kind an approximately 101-foot-long segment of an 8-foot-tall wrought iron fence.

The purpose of the fence is to delineate the Burma Road public right-of-way from the applicant's private sublease premises and to provide site security at this industrial site. While the project involves construction of the fence along 4,925 feet of Burma Road, only an approximately 101-foot-long section is within the Commission's permitting jurisdiction. The remainder of the fence is located more than 100 feet inland of the Bay shoreline. While located within a largely industrial area, Burma Road is significant from a public access standpoint in that it provides access to the future Gateway Park, which is located at the terminus of Burma Road and adjacent to the project site.

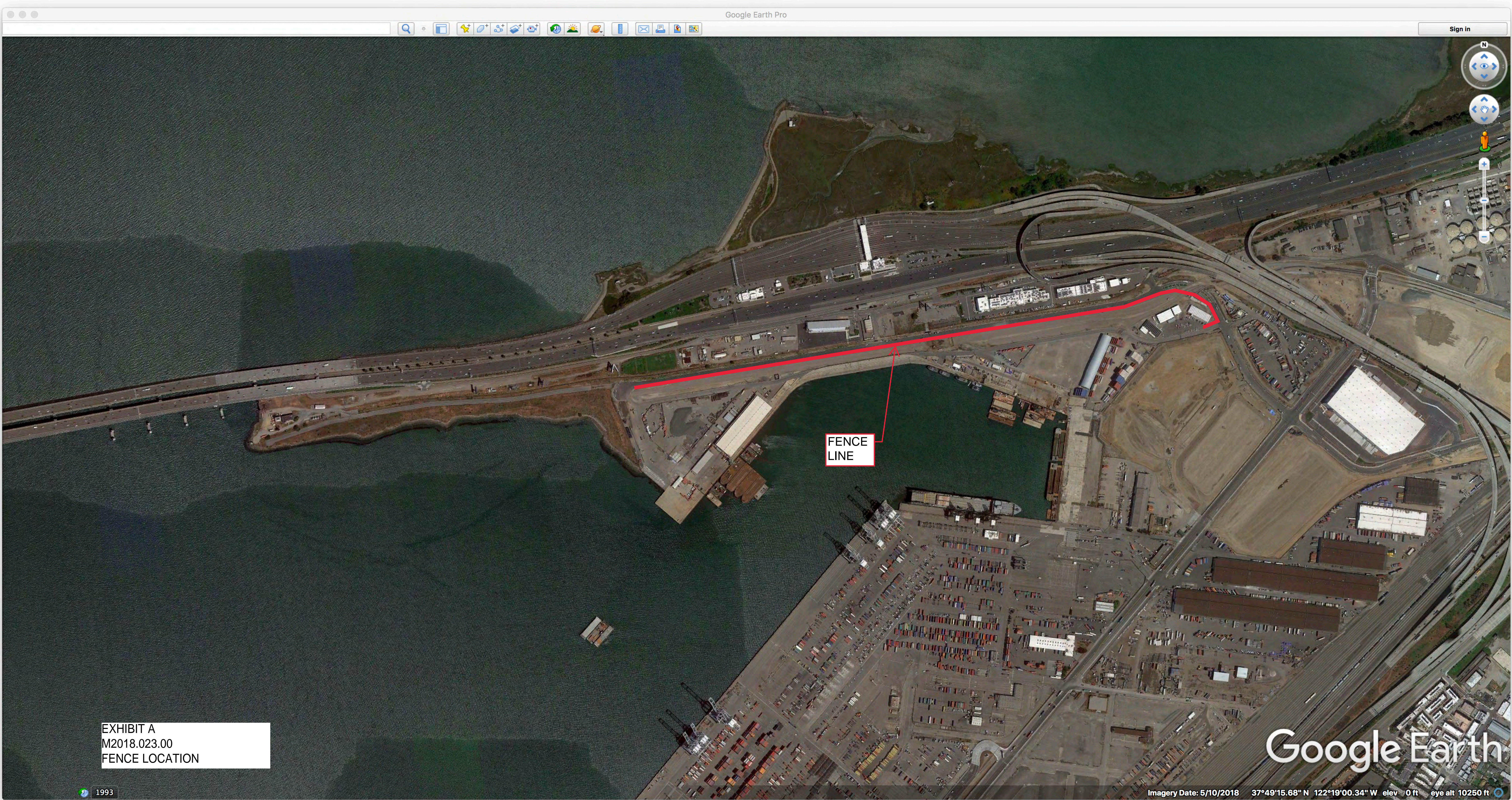
The project is not anticipated to have significant adverse impacts on public access to or along the Bay shoreline. The design of the fence provides a good amount of visual transparency so as to avoid blocking views of the Bay from Burma Road. The staff recommends that conditions of approval be incorporated to ensure that the project is constructed consistent with the design presented in the application to ensure that view impacts are minimized.

As proposed, a portion of temporary fence located outside the Commission's permitting jurisdiction would be constructed in an area that could block the entrance to a future public access parking lot to serve Gateway Park. While staff agrees that temporary fencing at this location is desirable from a public safety standpoint, in the long term, this portion of the fence will need to be removed to facilitate construction and use of the public access parking lot. Therefore, staff recommends a special condition requiring that at such time as the adjacent West Gateway Public Access Area required by BCDC Permit No. M2013.013.02 is made available to the public, the public's access is not restricted by fencing as part of this project.

In the time since the application was filed as complete—thus requiring the Commission or its Executive Director to act on the proposal within a 90-day period—the validity of the applicant's rights to the land has become the subject of a legal dispute pending resolution in a court of law. The property owner, the City of Oakland, has terminated the long-term lease to the subject property with the Oakland Bulk and Oversized Terminal, LLC ("OBOT"), an affiliate of the applicant from which the applicant has a 25-year sublease for the subject property. On December 4, 2018, plaintiffs OBOT and Oakland Global Rail Enterprise, LLC ("OGRE," the applicant) filed a lawsuit against the City of Oakland in the Alameda County Superior Court, challenging the termination of the lease, among other related matters. This lawsuit remains pending. Therefore, the staff recommends that a condition of approval be incorporated to ensure that the permittee submits additional proof of adequate property interest for review and approval by or on behalf of the Commission prior to construction. If the permittee does not provide further proof of adequate property interest, the permit would become null and void.

Tentative Staff Position: *Recommend Approval with Conditions.*

(Rebecca Coates-Maldoon, 415/352-3634 or rebecca.coates-maldoon@bcdca.gov)



FENCE
LINE

EXHIBIT A
M2018.023.00
FENCE LOCATION

Google Earth

